

Appln. No.: 09/882,100  
Response dated Sep. 26, 2005  
Reply to Office Action of Jul. 26, 2005

### REMARKS

Claims 1-20 are pending. The Examiner has rejected claims 1-20.

#### Claim Rejections under 35 U.S.C. § 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable by Bremer (U.S. No. 6,546,090) in view of Dirschedl (U.S. No. 6,262,994).

With regard to an obviousness rejection, MPEP 2142 states that in order for a *prima facie* case of obviousness to be established, three basic criteria must be met, one of which is that the reference or combination of references must teach or suggest all the claim limitations. Further, MPEP 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination", and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so'" (citing *In re Mills*, 916 F. 2d 680, 16 USPQ 2d 1430 (Fed Cir. 1990)). Moreover, MPEP 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion . . . , citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F. 3d 1308, 50 USPQ 2d 1161 (Fed Cir. 1999).

Applicant in a previous communication with the Office argued that regarding claims 1, 7 and 13, the cited prior art, Bremer in view of Dirschedl, fails to teach, suggest or disclose at least, "obtaining information regarding a data rate" (claims 1 and 7) or "estimating a maximum receive data rate" (claim 13). The Office Action alleges that an error rate of a signal corresponds to "information regarding a data rate" of claims 1 and 7 and "a maximum receive data rate" of claim 13. The Examiner has rejected Applicant's argument that the prior art rejections, including Bremer in view of Dirschedl, do not disclose all of the claimed features of independent claims 1, 7 and 13.

The Examiner argues, "determination of an error rate is regarded as the determination of information regarding a data rate. That is, the error rate is a rate of errors in the data which is transmitted." Additionally, the Examiner argued that "as understood to one having skill in the art, 'a data rate' does encompass data received correctly against data which is not recovered due

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to errors in the transmission.” Furthermore, the Examiner insists that error rate of the data constitutes the claimed “information regarding a data rate.”

Applicant respectfully disagrees. A “data rate” may be defined as “the rate at which a channel carries data, measured in bits per second, also known as data signaling rate.... In short, data rate is the measurement of how quickly data is transmitted.” (See, e.g., *Newton's Telecom Dictionary*, 21<sup>st</sup> Edition, 2005, page 236.) Simply stated, a “data rate” may be defined as “the speed at which a circuit of communications line can transmit information, usually measured in bits per second (bps).” (See, e.g., *Microsoft Press Computer Dictionary*, Third Edition, 1997, page 132.) Therefore, contrary to the Examiner's statement, the data rate simply measures the speed at which data is transmitted in a communications channel, regardless of the amount of “data received correctly against data which is not recovered due to error in transmission.” The measure of data rate, which is in bits per second, does not provide any indication of the amount of error of a transmitted signal but merely the amount of data (correct and erroneous) that is transmitted through a channel.

Additionally, “error rate” may be defined as “the ratio of the number of incorrect elements transmitted to the total number of elements transmitted.” (See, e.g., *Newton's Telecom Dictionary*, 21<sup>st</sup> Edition, 2005, page 314.) Therefore, the error rate is simply a ratio of two numbers, the number of erroneous bits in a group of transmitted bits, which is a value independent of the data rate of the transmission. For example, two communications systems with two different data rates can have the same value for error rate, therefore, the data rate of a communications system is not indicative of the error rate associated with the communications system, and as a result, and contrary to the Examiner's opinion, the error rate cannot be simply viewed as “information regarding a data rate.”

Therefore, Applicant respectfully submits that the Bremer reference, in view of the Dirschedl reference, fails to anticipate Applicant's claims 1, 7 and 13, for at least the reasons given above. Claim 1 is an independent claim having dependent claims 2-6, claim 7 is an independent claim having dependent claims 8-12 and claim 13 is an independent claim having dependent claims 14-20. Applicant believes that claims 1, 7 and 13 are allowable. Because claims 2-6, 8-12 and 14-20 are dependent upon claims 1, 7 and 13, respectively, Applicant respectfully submits that claims 2-6, 8-12 and 14-20 are, therefore, also allowable, for at least the

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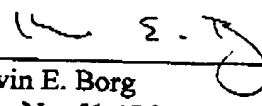
same reasons given with respect to claims 1, 7 and 13. Applicant, therefore, respectfully requests that the rejection of claims 1-20 under 35 U.S.C. § 103(a) be withdrawn.

Based on at least the foregoing, Applicant believes that all pending claims are in condition for allowance and respectfully requests that the application be allowed and passed to issuance. If the Examiner disagrees or has questions regarding this submission, Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: September 26, 2005

Respectfully submitted,

  
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